

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
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 VERNON COUNTY COURTHOUSE AND HUMAN :
 SERVICES, LOCAL 2918, AFSCME, AFL-CIO :
 : Case 84
 : No. 45973
 and : MA-6828
 :
 VERNON COUNTY : Case 85
 : No. 45974
 ----- MA-6829

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Klos, Flynn & Papenfuss, Attorneys at Law, by Mr. Jerome Klos, appearing on beh

ARBITRATION AWARD

Pursuant to a request by Vernon County Courthouse and Human Services, Local 2918, AFSCME, AFL-CIO, herein the Union, and the subsequent concurrence by Vernon County, herein the County, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on August 6, 1991 pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on October 22, 1991 at Viroqua, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on February 10, 1992.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The County initially raises an issue regarding the arbitrability of the instant dispute.

The parties also stipulated to the following issues:

1. Did the County violate the collective bargaining agreement by denying the reclassification requests of the grievants, Dorothy Shaw and Shelley Matson.
2. If so, what is the appropriate remedy?

BACKGROUND:

On September 7, 1990, Dorothy Shaw requested reclassification of her position from Social Service Aide II to Case Manager. On September 13, 1990, the Human Services Committee approved the reclassification request "upon clarification of job position in contract." On October 10, 1990, the Personnel Committee denied Shaw's request alleging that Shaw "did not follow proper procedure as outlined in Union contract." Shaw filed a grievance dated November 5, 1990, challenging the County's action under Section 21.02 of the agreement. By letter dated November 21, 1990, Linda Nederlo, Director, Vernon County Department of Human Services, forwarded the grievance to the Personnel Committee.

On December 6, 1990, the Personnel Committee considered Shaw's request for reclassification "de novo" having concluded that the defect in processing the grievance was not her fault. The Committee reviewed the reclassification request along with supporting documents and asked various questions. Following a discussion of the matter, the Committee denied the reclassification in writing and concluded:

1. 21.02 is discretionary not mandatory.
2. No Case Manager general classification exists in the contract - a single Mental Health Outreach Worker/Case Manager position was created by an Arbitrator's decision.
3. The work assignment of Shaw has not changed.
4. Her duties and responsibilities do not justify a wage schedule increase of over \$400 per month which would be comparable to a degreed Social Worker.

By letter dated December 19, 1990, Shaw notified the Union and the County of her intent to proceed to arbitration.

On September 27, 1990, Shelley Matson also requested reclassification from Social Service Aide II to Case Manager. The Personnel Committee denied the reclassification request by letter dated October 11, 1990 as follows:

The Personnel Committee met Wednesday, November 10 and reviewed your request for reclassification.

The Committee considered that the workload has increased in the past four years. This is the trend in all county positions. The committee feels that the responsibilities of the position remain the same as those described as Social Services Aide II. Therefore, the request for reclassification is denied.

Matson likewise filed a grievance on October 30, 1990 challenging the County's denial citing by way of contractual support Section 21.02 and the wage schedule. The grievance was denied by Roberta Ward, the grievant's immediate supervisor, on December 5, 1990. Matson submitted the grievance to Human Services Director Linda Nederlo by letter dated December 5, 1990. Following a review and discussion of the matter, the Personnel Committee denied the grievance in writing on December 6, 1990 for the following reasons:

1. 21.02 is discretionary not mandatory.
2. The grievant's immediate supervisor did not recommend any reclassification, the Department Head did. In any event, the Personnel Committee must make an independent decision.

3. The County does not believe any Case Manager general reclassification exists.
4. The work assignment has not changed.
5. The grievant's duties and responsibilities do not justify reclassification.

Matson notified the Personnel Committee, by letter dated December 20, 1990, of her intent to proceed to arbitration.

Hearing was held on the above two (2) grievances on October 22, 1991. The parties waived the Board of Arbitration and the time limits contained in Section 5.06 of the agreement.

Shaw works with the Supportive Home Care Program for the elderly and physically disabled. Her duties include the following:

Provide intake service for prospective Supportive Home Care clients from area health care facilities, physicians and/or community residents.

Follow through on the referral with a personal visit to determine eligibility and assess current needs or care of the individual to assure that an independent and safe lifestyle may be maintained.

Plan of care is established and services are coordinated through various related agencies. Adaptive equipment is ordered and obtained if so indicated. Contact is made with the Community Service Coordinator at Bethel Home to acquire services of a caregiver through the contracted service agreement with Bethel Home.

Monitor in home services and the care providers performance to assure that the clients needs are met and adequate ongoing care is provided.

Accompany client if needed to regular health care appointments and work as liaison on the clients behalf to insure that recommendations and orders of the physician are understood and implemented.

Provide reinforcement and encouragement to the individual client to continue with a safe and relatively productive and independent lifestyle.

Complete necessary Long Term Support screening assessments to meet the Wisconsin Medical Assistance Reimbursement Program Case Management guidelines. Maintain ongoing case history and current progress reports to coincide with the State requirements for Case Management.

Assess and act appropriately in crisis or emergency situations concerning safety, health and well being of client.

Maintain payroll records of direct service employees for IRS tax purposes. I am directly responsible for monthly Special Needs payroll for the direct service

employees. I also am responsible for quarterly tax reports, end of the year wage and deduction reports (W-2 and W-3) for all direct service employees of the Supportive Home Care Program.

Personal Care Case Management has been a recent addition to this position and adequate information and assessments must be maintained in order to qualify for the State reimbursement plan.

Monitor active foster care and/or adult group home placements. Maintain current knowledge of clients requiring temporary nursing home placements. Attend staffings at the nursing home should a client be so placed.

Work as liaison for the client with the Social Security Administration regarding current status and benefits. Provide Representative Payee service to clients that are unable to competently disburse their monthly Social Security or Social Security-SSI E Supplement benefits in an appropriately and timely manner.

Provide ongoing services and case management for an active case load of 33 clients.

A copy of her job description is attached hereto and marked as Attachment A. Shaw's duties have increased over a period of time with the largest increases in duties in the areas of personal care and case management, including responsibility for billing.

Shaw's position used to be classified as a Social Worker. Except for court work, her position retained the social worker duties when it was downgraded to an Aide position.

The largest portion of Matson's duties involve acting as coordinator of the County's child day care services. Matson also manages the protective payment/budget counseling program. In this capacity, she often works with involuntary, possibly hostile clients to help them pay their debts, and better manage their incomes. Matson is also the transportation coordinator for various clients of the County. Finally, she works with parents who have children placed in an alternate care arrangement such as foster care to help them support this placement financially. A copy of her job description is attached hereto and marked as Attachment B.

Matson is responsible for funding and revenues exceeding \$250,000. She serves a wide range of target groups among the four main programs she manages.

A copy of the Mental Health Outreach Worker/Case Manager job description is attached hereto and marked as Attachment C.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE II
ADMINISTRATION

2.01 Except as otherwise provided in this Agreement, the COUNTY retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote

or suspend or otherwise discharge or discipline employees for just cause; the right to decide the work to be done and allocation of work; to determine the services to be rendered, the materials and equipment to be used, the size of the work force, and the allocation and assignment of work and workers; to schedule when work shall be performed; to contract for work, services or materials; to schedule overtime work; to establish or abolish a job classification; to establish qualifications for the various job classifications; and, to adopt and enforce reasonable rules and regulations.

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ARTICLE V
GRIEVANCE PROCEDURE AND ARBITRATION

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5.02 In the event of any disagreement concerning the meaning or application of any provisions of this Agreement, such disagreement shall be resolved in the manner hereinafter set forth; however, no matter not involving the interpretation or application of this Agreement shall be subject to these procedures. It is further provided that any grievance must be timely filed within fifteen (15) calendar days of occurrence in order to be deemed a valid grievance.

. . .

5.05 Grievances subject to this arbitration clause shall consist only of disputes concerning the meaning or application of provisions of this Agreement. The Board of Arbitration shall have no power to add to, or subtract from, or modify any of the terms of this Agreement. No questions affecting the allocation of classifications to a pay grade will be considered arbitrable.

. . .

ARTICLE XXI
DEPUTIES AND RECLASSIFICATIONS

21.02 Reclassified Employees.
Reclassifications will be considered once a year by the COUNTY, upon written application of the employee to their Department Head, who shall refer said requests to the County Personnel Committee. Such requests must be submitted by no later than September 30th, and must contain therein the reasons for the requests.

ARTICLE XXIII
WAGES

23.01 The wage schedule adopted for this Contract shall be as set forth in Appendix A attached, and the classification schedule adopted for this

Contract shall be as set forth in Appendix B attached.

UNION SALARY SCHEDULE
1990

APPENDIX A

Name	Date Hired	Step	Salary
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HUMAN SERVICES

<u>MENTAL HEALTH CASE MANAGER</u>			
Theresa Wilkinson	5/21/90	prob.	1376.66
union position	9/9/90	11/21/90	1431.73

APPENDIX B

1990 CLASSIFICATION SCHEDULE
WAGE SCHEDULE

COURTHOUSE AND HUMAN SERVICES

Classification	Start	Step 1 6 Mo.	Step 2 18 Mo.	Step 3 30 Mo.	Step 4 42 Mo.	Step 5 54 Mo.
Mental Health Case Manager	1376.66	1431.73	1489.00	1548.56	1610.51	1674.94

UNION'S POSITION:

The Union initially argues that the Arbitrator has jurisdiction to decide the instant dispute. The Union reaches this conclusion based on the fact that the parties contract addresses the issue of reclassification both in Section 21.02 and in the Appendices where the wage classifications are set forth. The Union also relies on the fact it is not asking the Arbitrator "to add to, or subtract from, or modify any of the terms of the Agreement." In this regard, the Union points out it "is not requesting that the arbitrator change an allocation of a classification to a pay grade." Rather, the Union is requesting "that the grievants be placed in an existing classification, that of Case Manager, which accurately reflects the duties they are performing." The Union feels the Arbitrator has the authority to consider this question.

Assuming the Arbitrator has jurisdiction herein, the Union maintains that the grievants should be appropriately classified as Case Managers. In support thereof, the Union relies on the testimony of the Human Services Department supervisors and Director, comparisons of the duties of the grievants to that of the Case Manager, and the record evidence for each grievant personally to support its position that the grievants perform Case Manager work.

The Union also argues that the County acted in an arbitrary, capricious and unreasonable manner by its method of considering the grievants' request for reclassification. In this regard, the Union claims Matson was not even notified of the meeting of the Personnel Committee which considered her reclassification request. The Union also claims the Personnel Committee did not compare the job duties of the grievants to the job duties of the Case Manager to determine if the requirements and duties were of a similar nature, but rather simply decided there was no substantial increase in duties, and improperly denied the reclassification requests. Finally, the Union claims the real reason the Personnel Committee denied the grievances was the cost - approximately \$400.00 per month for each reclassification request. The Union feels that a decision by the Personnel Committee based solely on economics rather than the merits of the claims was improper.

Based on all of the above, the Union requests that the grievances be sustained, and that the Arbitrator find that the County violated the collective bargaining agreement. The Union also asks that the Arbitrator order the County to place the grievants at the Case Manager rate of pay, and make them whole for all losses suffered as a result of the County's actions.

COUNTY'S POSITION:

The County first argues that the Arbitrator does not have jurisdiction to decide the instant dispute. In this regard, the County argues that it has the contractual right to establish job classifications (2.01). The County adds that its authority in this area is only limited to its agreement (21.02) to

consider employee applications for reclassification once a year. The County argues that the appropriate County Committee, Personnel, considered the grievants' applications for reclassification and rejected the requests. The County concludes that "as a matter of law, there cannot be a Contract violation and there is no basis for a grievance or jurisdiction for an arbitration as the County decision is discretionary."

Assuming arguendo the Arbitrator has jurisdiction to consider the grievant's claims, the County argues the grievances still must fail since the County acted in good faith when considering the matter. In support thereof, the County claims the grievants had a full hearing on their requests "with presentations by the Grievants and their Union." The County also claims it considered the recommendations of supervisors and supervisory committees. The County further claims that the Personnel Committee questioned the participants, and concluded "after full consideration" that the reclassification requests were not supported and denied the requests. The County adds that the Personnel Committee denials set forth in writing the various reasons for the denial as follows:

1. 21.02 is discretionary not mandatory.
2. No general Case Manager classification exists in the agreement - only the Mental Health Outreach Worker/Case Manager single position created by the arbitrator's decision.
3. The grievants' work assignments have not changed.
4. The grievants' duties do not justify a wage schedule increase comparable to the rate paid a degreed Social Worker. This would involve an approximate 40 percent wage increase exceeding \$400 per month and is not justified. In the past, the County reclassified the position now held by Matson to remove from its duties certain court functions which required a social worker degreed person to administer and adjusted the wage scale downward accordingly. Neither position required a degreed social worker to perform the functions under such County, state or federal standards. Accordingly, they do not and should not command the equivalent social worker wage scale.

Based on the foregoing, and the record, the County argues that it gave both reclassification requests "consideration" as required by the agreement. To reach any other conclusion would be "to rewrite the Contract." Accordingly, the County requests that both grievances be denied.

DISCUSSION:

The parties waived the Board of Arbitration for a sole Arbitrator appointed according to the procedure noted above.

The County raises a threshold issue of arbitrability in the instant case. Article V, Section 5.02 provides that any disagreement concerning the meaning or application of any provisions of the Agreement shall be resolved through the contractual grievance/arbitration procedure. (Emphasis added) Section 21.02 provides that reclassification requests will be "considered" once a year by the County upon proper request. The wage schedule and classification schedule are incorporated into the agreement pursuant to Section 23.01. The grievants filed grievances challenging the County's denial of their reclassification requests

citing Section 21.02 and other pertinent parts of the agreement. In the grievances, the grievants raise an issue regarding whether the County properly "considered" their reclassification requests within the meaning of the contract. Based on the foregoing, the Arbitrator finds the County's arbitrability argument must fail.

The Arbitrator next turns his attention to the merits of the dispute. Article XXI, Section 21.02 provides that reclassifications will be considered once a year by the County upon written application of the employee. The Union argues that the County erred by failing to classify the grievants as Case Managers. The County claimed it acted properly and within its authority under the agreement when it denied the reclassification requests.

Assuming arguendo that there is a general classification of Case Manager in the agreement, the Union's claim still must fail. 1/ As noted above, Section 21.02 requires that reclassification requests be "considered" by the County. The record herein indicates that the County's Personnel Committee met on the reclassification requests in question. The Committee reviewed the materials submitted by the grievants and others. They asked questions and discussed the matter. The Committee subsequently denied the reclassification requests in writing and set out the reasons for the turndown therein. This course of action, in the Arbitrator's opinion, meets the standard requiring the County to "consider" reclassification requests found in Section 21.02.

The Union argues, however, that the County acted in an arbitrary, capricious and unreasonable manner by its method of considering the grievants' requests for reclassification. The Union cites several examples of what it considers as unreasonable behavior. In effect, the Union is requesting that the Arbitrator hold the County to a minimum standard of review regarding reclassification requests.

1/ The record contains better evidence that the agreement contains a specific classification entitled Mental Health Case Manager rather than a general classification of Case Manager. In this regard the Arbitrator notes the testimony of County witness John Parkyn on bargaining history which was generally supported by Union witness Pat Vikemyr. There is nothing in the agreement which would lead to a different conclusion. The Union failed to submit a copy of the applicable Arbitration Award for review by the Arbitrator as requested.

The Arbitrator is unconvinced by the Union's contention and will not read something into the agreement which the parties did not bargain nor which is not there. If the parties had intended that the County should be held to a minimum standard of reasonableness in its treatment of reclassification requests, the parties could have so stated in the agreement. Failing this, violation of such an imaginary standard cannot be a contract violation as alleged by the Union in its argument. 2/

The Union makes a strong case that the grievants are underclassified. In this regard, the Arbitrator notes the record supports a finding that many of the grievants' duties and responsibilities are comparable to those in the higher classifications of Mental Health Case Manager and Social Worker. 3/ (Emphasis added) However, that is not the issue before the Arbitrator. The issue before the Arbitrator is whether the County violated the collective bargaining agreement by denying the grievants' request to be reclassified at the Mental Health Case Manager level. Based on all of the foregoing, the Arbitrator concludes that the answer to the issue as stipulated to by the parties is NO, the County did not violate the collective bargaining agreement by denying the reclassification requests of the grievants, Dorothy Shaw and Shelley Matson, and it is my

AWARD

That the grievances of Dorothy Shaw and Shelley Matson are hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin this 8th day of April, 1992.

By _____
Dennis P. McGilligan, Arbitrator

2/ Assuming arguendo that the Arbitrator has the authority to read into the Contract a minimum standard of fairness upon which the County must review reclassification requests, the Union's case still must fail. In this regard, the Arbitrator notes, contrary to the Union's assertions, that the record does not support a finding that the Company based its decision to deny the reclassification requests solely on cost or that the County failed to make a comparison of the grievants' duties and the applicable class specifications in arriving at its decision.

3/ See in particular Attachments A, B, C and the testimony of the grievants, Dorothy Shaw and Shelley Matson, as well as the testimony of Pat Vikemyr, Jean Klousia, the Long Term Support Supervisor and Linda Nederlo, Director, County's Department of Human Services.